IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.197 OF 2006
IN
LETTERS PATENT APPEAL NO.268 OF 2005
IN
WRIT PETITION NO.6174 OF 2005

Atul Jagdish Khanna .. Applicant
v/s.
Mona Atul Khanna and another .. Respondents

Mr.Haresh Jagtiani, senior counsel i/by Mr.A.T.Agarwal for the applicant.

Mr.Aman Lekhi, senior counsel with Ms.Meenakshi Lekhi, Mr.Utkarsha Tiwari and Ms.Prachi Pandey for the respondent No.1.

Ms.P.S.Cardozo, Assistant Government Pleader for the respondent No.2.

CORAM : R.M.LODHA &
S.J.VAZIFDAR, JJ.

DATED : 11TH JULY, 2006.

P.C.

We heard Mr.Haresh Jagtiani, senior counsel for the appellant-applicant and Mr.Aman Lekhi, senior counsel for the respondent No.1.

2. The necessity of this application has arisen as the Family Court by its order dated 29.5.2006 has stayed further proceedings in Matrimonial Petition No.A-10 of 2004.

3. Bereft of unnecessary details, the few relevant facts may be noticed immediately for consideration of this application. In the Matrimonial Petition No.A-10 of 2004, the respondent No.1 (for short, "the wife") made an application for maintenance pendante lite and litigation expenses. The Family Court by its order dated 23rd August, 2005 awarded maintenance pendante lite at the rate of Rs.2,50,000/- per month and also an amount of Rs.75,000/- as litigation expenses. The appellant (for short, "the husband") aggrieved by the order dated 23rd August, 2005, filed writ petition before this court. On 19th September, 2005, the learned Single Judge of this court issued notice before admission and further ordered that upon the husband paying a sum of Rs.2,50,000/- to the wife, there shall be ad-interim stay of further proceedings. Thereafter, on 24th October, 2005 by consent of the counsel for the parties, the order came to be passed that husband shall pay a sum of Rs.50,000/- on/or before 28th October, 2005 to the wife without prejudice to the right of either side; the husband shall be

entitled to visit the children on 2nd and 3rd November, 2005 and that the interim stay shall continue until further orders. On 21st November, 2005, after hearing the senior counsel and counsel for the parties, the learned Single Judge issued rule and refused to grant an interim order staying the order of maintenance granted by the Family Court. The husband challenged the order dated 21st November, 2005 by filing Letters Patent Appeal. After hearing the senior counsel and counsel for the parties, the appeal was admitted. The issue of maintainability of appeal was kept open and by way of ad-interim order, the Division Bench directed that the husband shall pay to the wife a sum of Rs.8,75,000/- towards the arrears of maintenance payable on/or before 31st December, 2005 and that he shall keep on paying a sum of Rs.1,00,000/- every month by way of interim maintenance from the month of January, 2006 on/or before 7th of each month. The court recorded that the husband shall be paying the entire expenses of both the school going children towards tuition fee and all the outgoings of the flat in which the wife was residing. Thereafter, the Family Court on the application made by the wife for adjournment of the petition till final disposal of Letters Patent Appeal, passed an order on 29th May, 2006 staying the proceedings in the matrimonial petition. This is how

the application came to be made by the husband and is under consideration by us.

4. The senior counsel for the wife in opposition to the application submitted: (i) that so long as the Letters Patent Appeal arising out of the order of maintenance pendante lite under section 24 is pending, further proceedings in the main petition cannot go on. According to him there is no difference between a case where no interim maintenance has been awarded under section 24 and the case where interim maintenance has been awarded to the wife during the pendency of the original proceedings by the trial court but in appeal or other proceedings the interim/ad-interim order is passed modifying the amount of interim maintenance as by award of lesser interim maintenance, the wife is deprived in contesting the matrimonial proceedings with optimum effect; (ii) that by the orders dated 19.9.2005 and 24.10.2005, further proceedings in Matrimonial Petition No.A-10 of 2004 remain stayed and the said orders have not merged in the subsequent order dated 21.11.2005; (iii) that the Letters Patent Appeal itself being not maintainable, civil application is also not maintainable and (iv) that the application is barred by section

19 of the Family Courts Act, 1985.

5. After having heard the senior counsel for the parties for quite some time, we find no merit in the submissions of the senior counsel for the wife. It is an admitted fact that the Family Court passed an order on the application made by the wife under section 24 of the Hindu Marriage Act directing the husband to pay maintenance pendante lite at the rate of Rs.2,50,000/- per month and the litigation expenses of Rs.75,000/-. It is also admitted position that in Letters Patent Appeal, by way of an ad-interim order, this court directed the husband to pay to the wife a sum of Rs.8,75,000/- towards the arrears of interim maintenance and a sum of Rs.1,00,000/- every month by way of interim maintenance from the month of January, 2006. The amount of arrears of interim maintenance as per the order dated 23rd December, 2005 has been paid by the husband to the wife. The husband is also paying interim maintenance in the sum of Rs.1,00,000/- per month to the wife from 1st January, 2006. Once the interim maintenance as awarded by an interim order in Letters Patent Appeal is being paid by the husband to the wife, the pendency of the Letters Patent Appeal could not be a ground for staying further

proceedings in the matrimonial petition. Besides that, we now direct the husband to pay to the wife litigation expenses of Rs.75,000/- as awarded by the Family Court. We, accordingly, overrule the contentions (i) and (ii) advanced by the senior counsel for wife.

6. The issue regarding maintainability of the Letters Patent Appeal has been kept expressly open by the Bench admitting the Letters Patent Appeal. Obviously, therefore, the issue of maintainability of the Letters Patent Appeal shall be examined at the time of the hearing of the appeal. Presently Letters Patent Appeal stands admitted and an interim order of maintenance dated 23rd December, 2005, is operative. The third contention does not require further discussion.

7. The fourth contention raised by the senior counsel for the wife is that the application is not maintainable. He relies on section 19 of the Family Courts Act. Section 19 provides for appeals and revisions from the order and judgment of the Family Court. We hardly find relevance of section 19 in deciding the controversy raised in the application. The necessity of considering this application has arisen

because of the erroneous observation made by the Family Court in its order that since the order passed by the learned Single Judge on 19.9.2005 is not set aside in Letters Patent Appeal No.268 of 2005, further proceedings in M.J.Petition remain stayed by the High Court. Having noticed three orders passed by the learned Single Judge on 19.9.2005, 24.10.2005 and 21.11.2005, it is clear to us that the order dated 19.9.2005 and 24.10.2005 ran its course once the order dated 21.11.2005 came to be passed by the learned Single Judge.

8. It is pertinent to notice that the order dated 19.10.2005 staying further proceedings in M.J.Petition came to be passed by the learned Single Judge at the instance of the husband. The husband does not want further proceedings to be stayed in the matrimonial proceedings. In this view of the matter, the clarification has become necessary by this court that during pendency of the Letters Patent Appeal, the proceedings in Matrimonial Petition No.A-10 of 2004 may continue and the said proceedings are not stayed by this court.

9. We clarify that in case the husband commits any default in payment of maintenance, it is always open to the wife to make an

appropriate application before the Family Court and such application shall be considered by the Family Court in accordance with law.

10. We, accordingly, dispose of the civil application by the following order:-

i) There is no impediment for the Family Court to proceed with the further proceedings in Matrimonial Petition No.A-10 of 2004 during the pendency of the Letters Patent Appeal and the writ petition No.6174 of 2005.

ii) The husband shall pay litigation expenses in the sum of Rs.75,000/- to the wife within two weeks from today.

iii) The hearing of Letters Patent Appeal is expedited and we direct the office to post the appeal for final hearing on 7th August, 2006.

Civil application stands disposed of.

(R.M.LODHA, J.)

(S.J.VAZIFDAR, J.)